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NOTES.

INTERFERENCE WITH BUSINESS OR EMPLOYMENT—BOYCOTT—Commented upon in the House of Lords for the first time since its decision by that body, the famous case of *Allen* v. *Flood* [1898] A. C. 1, has recently been so construed as to deprive it of its supposed far-reaching effect; hereafter it must be considered merely as affirming a well settled rule of law. *Quinn* v. *Leathem* [1901] A. C. 495.

It will be convenient briefly to recall the facts in the *Flood* case: The boiler makers employed by the Glengall Iron Co. objected to working with certain shipwrights, Flood and Taylor, because these men had previously worked in both wood and iron, and not solely in wood, as the boiler makers contended they should have done. Allen, a delegate of the boiler makers' union, waited on one of the officials of the company and stated to him that, unless the obnoxious persons were sent away, the other workmen would go out on strike. The company having discharged the two men, they brought suit against Allen for causing them to lose their employment. At the trial, conspiracy was not proved, nor was any breach of contract shown (the shipwrights having been subject to dismissal at the pleasure of their employers), but the jury found that Allen had maliciously induced the company to dismiss the plaintiffs. In the lower courts Flood and Taylor were successful, but the House of Lords held, by a vote of six to three, that no cause of action existed. During the various stages of the litigation eight judges (including six law lords) took this view; thirteen judges (including three law lords) expressed themselves in favor of allowing a recovery.

In *Quinn* v. *Leathem*, *supra*, the plaintiff, a butcher, sued certain members of a trade union for damages caused by their deliberate and concerted action in inducing his customers not to deal with him, and

his servants not to continue in his employment. It seems that the defendants had conducted their boycott for the purpose of punishing the plaintiff for his refusal to dismiss several non-union workmen in his shop. The House of Lords, holding that the *Flood* case had no bearing on this, were unanimous in their decision that the plaintiff was entitled to recover.

If the result reached in *Allen* v. *Flood* was brought about (as has been supposed) by the difficulty of holding an act which causes injury unlawful, merely because it is done with a bad motive, that objection seems to be of equal force in such a case as this. On the other hand, the acts complained of in the two cases were quite dissimilar, and the element of combination in *Quinn* v. *Leatham*, which was lacking in *Allen* v. *Flood*, seems to furnish ground for a valid distinction between them. Whatever may be said against holding persons liable for acts done in concert, when the same acts done by an individual would give rise to no cause of action, the fact remains that the acts of the defendants in the principal case could not have been done by a single person, and the oppression and terrorism of the boycott have a vitally different character from other acts of interference. Had conspiracy been shown in *Allen* v. *Flood*, the result of that case would have been different, for both Lord MACNAGHTEN and Lord SHAND, two of the six judges on the side of the majority, stated expressly that in that event they would have held that a right of action existed, and their two votes would have given the case to Flood. [In this connection it is interesting to note the relation to the *Flood* case of the judges who have now decided *Quinn* v. *Leathem*. Two of these six lords were Lord MACNAGHTEN and Lord SHAND, whose position in the former case has just been indicated; another, Lord HALSBURY, L. C., vigorously dissented in 1897; a fourth, Lord BRAMPTON, as HAWKINS, J., advised the Lords against the view which finally prevailed; while Lord LINDLEY and Lord ROBERTSON took no part in the decision of the earlier case.]

But the House of Lords was not content to rest its disposition of *Quinn* v. *Leathem* solely on the ground of oppressive combination; it proceeded to treat the case as coming under a rule whose very existence *Allen* v. *Flood* was supposed to have negatived. However, the judges contended that the *Flood* case laid down no new rule governing malicious injury, or interference with one's business—that, in fact, that decision announced no new principle of law at all, but merely applied the doctrine referred to by PARKE, B., half a century ago: "An act which does not amount to a legal injury cannot be actionable because it is done with a bad intent." *Stevenson* v. *Newnham* (1853) 13 C. B. 297. And Allen's conduct did not "amount to a legal injury" to Flood and Taylor, not (it is asserted) because their trade rights were too vague and indefinite to be protected by the law, but because neither those nor any other rights of theirs were infringed—because "all that Allen did was to inform the employers of the plaintiffs that most of their workmen would leave them if they did not discharge the plaintiffs."

"Truly, to inform a person that others will annoy or injure him unless he acts in a particular way cannot of itself be actionable, whatever the motive or intention of the informant may have been" (*per* Lord LINDLEY). No doubt, the wide diversity of opinion among the judges as to what inferences of fact might properly be drawn from the evidence bearing on Allen's conduct [the judges summoned to advise the Lords were requested to answer one question only: "Assuming the evidence given by the plaintiffs' witnesses to be correct, was there any evidence of a cause of action fit to be left to the jury?"] caused much confusion in *Allen* v. *Flood;* yet the present construction of that decision seems forced and narrow. If it rested on this ground, why was it necessary for the House of Lords to have the case twice argued before it, to keep it under consideration for over a year, and to resort to the almost obsolete practice of summoning the judges? The Lords might have satisfied themselves with a brief reference to the authorities, instead of writing their very learned and elaborate opinions.

Laying aside the element of conspiracy in *Quinn* v. *Leathem*, we have a malicious interference with the plaintiff's business, for "one's right to deal with others is nugatory, unless they are at liberty to deal with him if they choose to do so;" and a violation of this right causing damages, is actionable, the Lords declare, in the absence of lawful justification or excuse. But, inasmuch as one's right to carry on his business as he sees fit, is no better or higher than his right to do other acts not prohibited by law, it seems to follow that any intentional violation of one's rights which results in damage, if without justification or excuse, gives rise to a cause of action. And this doctrine, we take it, is the principle really underlying the decisions in *Lumley* v. *Gye* (1853) 2 E. & B. 216, and *Bowen* v. *Hall* (1881) 6 Q. B. Div. 333,—not the theory that one has a sort of right *in rem* not to have the performance of his contracts interfered with by third parties.

Because of the scarcity of decisions on the point, possible grounds of justification or excuse can only be suggested. Where the injury complained of results from legitimate trade competition, either by an individual or by a combination, no recovery may be had, *Mogul S. S. Co.* v. *McGregor* [1892] A. C. 25; and so, too, when it is caused by the lawful exercise of contract or property rights. *Bradford Corporation* v. *Pickles* [1895] A. C. 587. Probably in cases which might come within the general doctrine of privilege, the defendant would also escape liability. In *Quinn* v. *Leathem* the acts of the defendants were clearly not excusable, their sole purpose being to injure the plaintiff.

PEOPLE *v.* MOLINEUX.—Two rules of evidence established at common law have been carefully considered by the New York Court of Appeals in the recent case of *People* v. *Molineux* (Oct. 1901) 61 N. E. 286. The one, that the state cannot prove against a defendant any crime not alleged in the indictment, either as a foundation for a separate punishment, or as aiding the proofs that he is guilty of